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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,546	07/27/2001	John H. Schneider	769-283	8553

7590

09/10/2003

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EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,546

Applicant(s)

SCHNEIDER, JOHN H.

Examiner

Greg Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 28, 2003 has been entered. Claims 1-11 and 13-15 are pending in the application
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1-6, 8-11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al (US 6,115,892) in view of May (US 5,647,671) and Van Erden (US 6,212,857).

Regarding claims 1 and 9, Malin et al discloses a method for producing a tamper evident plastic bag. Malin et al provides a zipper (Col. 2, ll. 35-38); positions said zipper on a web of bag making film with a second flange profile atop a first flange profile (Col. 3, ll. 9-11); secures the second flange profile distal portion to the web of bag making film (Col. 3, ll. 12-14, Figure 4); and transports the web of bag making film in a longitudinally

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moving direction to a form, fill, and seal (FFS) machine (Col. 3, ll. 18-20, and Figures 3, 4, and 8).

Malin et al also discloses a zipper structure with a first zipper profile (16) and second zipper profile (18) that include mating interlocking members (Figure 1). In addition, Malin et al discloses first flange (26), second flange (28), and tamper evident feature (32); tamper evident feature (32) is interposed between the proximal and distal portions of second flange (28). Malin et al teaches the placement of second flange (28) atop first flange (26) and the subsequent securing to the web (34) in order to prevent the flaring of the second flange (28) upon entry into the FFS machine (see for example, Col. 2, ll. 17-24 and ll. 35-38). The examiner will refer to this as a ramp feature.

Malin et al discloses the claimed invention except for second flange (28) longer than first flange (26), and positioning a slider over the interlocking members before positioning the zipper on the web.

May discloses a zipper structure (80, Figures 5 and 6) with a second flange (88) longer than a first flange (86). May teaches the flange arrangement in order to control the strength of the seal by limiting the number of layers required to penetrate (Col. 8, ll. 52-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the zipper of Malin et al with one flange shorter than the other flange as taught by May in order to enhance the sealing control. It further would have been obvious to provide the second flange longer than the first flange (and therefore spaced apart in a longitudinally moving direction) in order to maintain the ramp feature necessary to overcome the flange-flaring problem stated by Malin et al.

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The method of Malin-May meets all limitations claimed by the applicant except for positioning a slider over the interlocking members before positioning the zipper on the web.

Van Erden discloses positioning a slide on a zipper assembly before positioning the assembly on a web (Figures 1b and 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the zipper assembly of Malin-May with a slider in order to provide a convenient form of opening and closing the bag to the consumer. The examiner notes that sliders are common and conventional in the zippered bag art. It would have further been obvious to one of ordinary skill in the art at the time the invention was made to provide the slide on the zipper before transport to the FFS machine as taught by Van Erden in order to reduce the mechanical components around the FFS machine.

As to claims 2, and 10-11, Malin et al further discloses the sealing of first flange (26) to web (34) and the proximal portion of second flange (28) to web (34) after forming of web (34) into a tube (Col. 3, ll. 30-34). As these seals are meant to remain intact when the bag is opened, they are considered a hard seal.

As to claim 3, May teaches the use of a peel seal with a zipper to indicate to the consumer that the bag has been opened. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply second flange (Malin, 28) to web (Malin, 34) with a peel seal as taught by May in order to indicate to the consumer when the bag has been opened. The examiner notes that a peel seal and a frangible

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perforation are functional equivalents when used as an indicator for the opening of a bag.

As to claims 4, 6, and 8, Malin et al teaches the use of a perforated line for tamper evident feature (32) on second flange (28) to indicate to the consumer that the bag has been opened. The examiner notes that a perforated line and a scored line (said scored line and said perforated line being frangible) are functional equivalents when used as an indicator for the opening of a bag, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any commonly used indicator to display to the consumer that the bag has been opened.

As to claim 5, Malin et al discloses zipper (10) oriented in a direction transverse to the machine direction of web (34) through an FFS (Figure 3).

Regarding claim 13, the bag (Malin, 50) formed through the process of Malin-May-Van Erden would be the structural equivalent of the bag claimed by the applicant and therefore would have been obvious in view of Malin-May-Van Erden.

As to claim 14, the method of Malin-May-Van Erden as applied to claim 1 above discloses distal portions of first flange (Malin 26) and second flange (Malin 28) spaced apart and the final sealing of proximal and distal portions after processing through the FFS (Col. 3, ll. 30-34).

As to claim 15, the method of Malin-May-Van Erden as applied to claim 1 above discloses the single step attachment of the second flange (Malin, 28) to the web (Malin, 34) for the purpose of transportation through the FFS without flaring (Malin, Col 3, ll. 6-20). The method of Malin-May-Van Erden applies the final sealing of proximal portions

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and distal portions after processing through the FFS (Malin, Col. 3, ll. 30-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to secure the second flange to the web while the first flange remains unsecured in order to maintain the single sealing step before processing through the FFS while keeping the ramp feature and the subsequent sealing steps virtually the same.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al in view of May and Van Erden as applied to claim 6 above, and further in view of Boeckmann et al (US 5,023,122).

The method of Malin-May-Van Erden, as applied to claim 6 above, meets all limitations claimed by the applicant except for a frangible cap layer covering the perforated line.

Boeckmann discloses a bag structure with frangible cap (23) located over perforated line (21). Boeckmann teaches the use of frangible cap (23) to provide a seal over the perforated line until tearing occurs (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bag structure of Malin-May-Van Erden with the frangible cap of Boeckmann in order to prevent contamination of the bag contents during storage.

Response to Arguments

5. Applicant's arguments filed July 28, 2003 have been fully considered but they are not persuasive.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all teachings are found in the references themselves. Malin et al is the base reference, which is modified with the differing sized flanges as taught and suggested by May for the purpose of seal strength control (May, Col. 8, ll. 52-58). The method of Malin-May is further modified with a slider positioned before transport to the FFS as taught and suggested by Van Erden (Figures 1b and 2).

7. In response to the applicant's arguments on the shortcomings of May with respect to the flange arrangement and the tamper evident feature, the examiner notes that Malin et al is clearly the base reference, not May. As to the flange arrangement, the entire disclosure of Malin et al is directed to the ramp feature previously presented. Malin et al forms this ramp feature by sealing three layers of film together (Figure 4), while May discloses a means to better control the strength of that seal and only use two layers of film, while maintaining the ramp feature. As to the tamper evident feature, applicant admits that Malin et al does disclose the tamper evident feature in the top

flange on Page 7, line 6 of the response. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

9. The examiner asserts with the above arguments that a prima facie case of obviousness has been established.

Conclusion

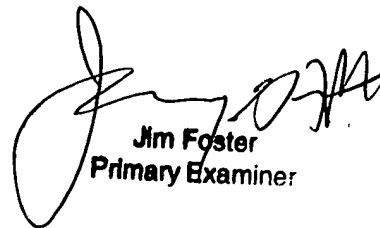
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

GP
Gregory Pickett
Examiner
August 7, 2003


Jim Foster
Primary Examiner